

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
SAN BERNARD ELECTRIC)	FCC File No. 0000518295
COOPERATIVE, INC.)	
)	
and Request for Waiver to Operate)	
Other Industrial/Land Transportation Pool)	
Station WNTX234, Bellville, Texas)	

ORDER ON RECONSIDERATION

Adopted: August 15, 2002

Released: August 21, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On March 8, 2002, San Bernard Electric Cooperative, Inc. (San Bernard), filed a petition for reconsideration¹ of a decision by the Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau (Division),² denying San Bernard's waiver request and dismissing its late-filed renewal application. For the reasons set forth below, we grant San Bernard's reconsideration petition.

2. *Background.* On April 23, 1996, the Commission granted San Bernard's renewal application for Station WNSZ920, Bellville, Texas. On January 22, 2001, the Commission issued a renewal reminder notice for Station WNSZ920.³ The authorization expired on April 23, 2001. On May 11, 2001, San Bernard filed an application requesting renewal of its license for Station WNSZ920 electronically using the Commission's Universal Licensing System (ULS).⁴ On May 21, 2001, San Bernard submitted a check to pay the filing fee, with a cover letter. On May 30, 2001, the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch) returned the cover letter and check as unprocessable, (1) stating that the reason for return was that no Remittance Advice form (FCC Form 159) accompanied the submission; (2) advising that the fee and form must be received within ten days of the receipt of an electronic filing and (3) instructing San Bernard to refile.⁵ Also on May 30, 2001, the Branch dismissed the application because the FCC Form 159 was not received by the

¹ See Petition for Reconsideration filed by Gary Guthmann on behalf of San Bernard Electric Cooperative on Mar. 8, 2002 (Petition).

² Letter from Ramona E. Melson, Deputy Chief, Public Safety and Private Wireless Division, to Gary W. Guthmann (Feb. 6, 2002) (Dismissal Letter).

³ See FCC Reference Number 794672, Renewal Reminder sent to San Bernard Electric Cooperative, Inc., P.O. Box 158, Bellville, TX 77418.

⁴ See Application FCC File Number 0000518295, filed May 11, 2001.

⁵ See FCC Form 1072, Unprocessable Request Form dated May 30, 2001 with enclosures San Bernard correspondence and check #00985595 and a blank FCC Form 159 Remittance Advice Form (FCC Form 159).

Commission within the required time period.⁶ On June 25, 2001, San Bernard filed an application for Special Temporary Authority (STA) to operate the station, which the Branch granted on June 27, 2001, under Call Sign WPSN406.⁷

3. On July 10, 2001, San Bernard filed a new application,⁸ which it subsequently amended on July 23, 2001, to include a request for waiver of Section 1.949 of the Commission's Rules⁹ seeking renewal of its license to operate Station WNSZ920.¹⁰ In its waiver request, San Bernard stated that (a) on May 11, 2001, it submitted a credit card payment for the application filing fee, but that it was not clear whether the credit card payment was processed so San Bernard contacted the Commission on May 21, 2001, and was advised to send payment by check; (b) that check was returned because the FCC Form 159 did not reference the application file number; (c) San Bernard demonstrated "repeated good faith efforts to satisfy the fee-filing requirement by check"; and (d) that the license is crucial to the delivery of electrical service to approximately 19,000 customers in seven rural Texas counties.¹¹

4. On February 6, 2002, the Division denied San Bernard's waiver request and dismissed the application because San Bernard offered no explanation for its failure to file a renewal until after the license expired.¹² The Division rejected San Bernard's first contention, stating that San Bernard had submitted no evidence to support its claim that it attempted to make an electronic payment by credit card on May 11, 2001.¹³ The Division also concluded that San Bernard bore responsibility for any delay resulting from its failure to submit its payment in a processable form.¹⁴ Accordingly, the Division stated that San Bernard did not provide sufficient reasoning upon which to warrant grant of a waiver of Section 1.949 of the Commission's Rules to allow submission of the renewal application after the license had expired.¹⁵ On March 8, 2002, San Bernard requested reconsideration of the Division's decision.¹⁶

5. *Discussion.* The Commission's policy regarding treatment of late-filed renewal applications in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under our rules, but the licensee may be subject to an enforcement action for untimely filing

⁶ See Notice of Dismissal, Reference Number 930816, dated May 30, 2001.

⁷ See FCC File Number 0000500582. The STA under Call Sign WPSN406 expired on Dec. 27, 2001. San Bernard subsequently filed a request to renew the STA, FCC File No. 0000713379, which the Branch granted on Dec. 31, 2001, with an expiration date of July 1, 2002.

⁸ See FCC File Number 0000518295, filed July 10, 2001, and amended on July 23, 2001.

⁹ 47 C.F.R. § 1.949.

¹⁰ See San Bernard Request for Waiver of Section 1.949 (filed July 23, 2001).

¹¹ *Id.*

¹² See Dismissal Letter at 2-3.

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ Petition at 1.

and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹⁷ Applicants who file renewal applications more than thirty days after the license expiration date may also request that the license be renewed *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹⁸ In determining whether to grant a late-filed renewal application, we take into consideration all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹⁹

6. In its reconsideration petition, San Bernard again asserts that it should be granted the requested relief because it attempted to make an electronic payment by credit card on May 11, 2001. In support of its contention, San Bernard submits information, which it received from the Commission through its frequency coordinator after it filed its waiver request, indicating that ULS at one time had a technical problem that resulted in a screen reporting that an applicant had paid its filing fee, when in fact the filing fee was not received.²⁰ San Bernard also now submits a printout of a ULS screen indicating that the fee associated with its initial renewal application had been paid, which corroborates the information it received regarding ULS. San Bernard states that “this entire matter could have been avoided but for the programming failure associated with credit card payment of the application filing fee via ULS.”²¹

7. Taking into account all of the facts and circumstances, including the additional information articulated in San Bernard’s Petition, we conclude that San Bernard’s Petition should be granted. In this particular case, we conclude that dismissal of San Bernard’s application would be unduly harsh and contrary to public interest. We agree with San Bernard the payment defect relating to its initial renewal application was a consequence of a technical problem in the ULS beyond San Bernard’s control. Therefore, San Bernard has presented an explanation for its failure to renew the license earlier. In addition, two other factors set forth by the Commission – the potential consequences to the public if the licensee should terminate, and the performance record of the licensee – militate in favor of granting San Bernard’s request. In light of the additional supporting evidence provided, we believe that the late-filed renewal application for the subject station should be granted.

9. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, that the petition for reconsideration submitted by San Bernard Electric Cooperative, Inc., on March 8, 2002, IS GRANTED.

10. IT IS FURTHER ORDERED that the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch SHALL PROCESS the renewal application FCC File No.

¹⁷ See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission’s Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476 (1999).

¹⁸ See *id.* at 11486 ¶ 22.

¹⁹ See *id.* at 11485 ¶ 22.

²⁰ E-mail from Kimberly Pristello, FCC, to Renee McIlwain, United Telecom Council (Mar. 1, 2002). Because San Bernard could not have presented these facts earlier, it may rely on this information, even though it was not previously presented to the Division. See 47 C.F.R. § 1.106(b)(2)(ii).

²¹ Petition at 3.

0000518295 filed by San Bernard Electric Cooperative July 10, 2001 and amended on July 23, 2001 and September 25, 2001, in accordance with this *Order on Reconsideration*.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau